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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

NEW JERSEY COALITION OF
AUTOMOTIVE RETAILERS, INC.,

Plaintiff,

v.

MAZDA MOTOR OF AMERICA, INC.

Defendant.

Case No. 3:18-cv-14563-BRM-TJB

Motion Day: December 3, 2018

**DECLARATION OF KYLE KACZMAREK
IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS**

I, Kyle Kaczmarek, declare:

1. I am the Network Operations Manager for the Northeast Region of defendant Mazda Motor of America, Inc., d/b/a Mazda North American Operations ("Mazda"). I make this declaration in support of Mazda's motion to dismiss. I have personal knowledge of the facts stated herein.

2. Mazda is the exclusive U.S. distributor of new Mazda motor vehicles.

3. Mazda distributes new Mazda motor vehicles in the U.S. through a network of franchised dealers.

4. The relationship between Mazda and its dealers is governed by a contract known as a “Dealer Agreement.” The Mazda Dealer Agreement has three parts: (1) the “Purposes and Objectives Agreement”; (2) the “Standard Provisions”; and (3) the “Addenda.” Included among the “Addenda” is Addendum B (“Facilities Addendum”), which contains provisions related to the dealer’s use of its facilities.

5. Annexed hereto as Exhibit 1 is true copy of Addendum B to the current Dealer Agreement for a New Jersey Mazda dealer. For confidentiality reasons, the name of the dealer and other identifying information has been redacted from the exhibit.

6. Among other responsibilities as Network Operations Manager, I supervise dealers participating in Mazda’s “Retail Evolution Program,” which is the name of Mazda’s current facility image program.

7. To enroll in the Retail Evolution Program, a dealer must execute an agreement to construct a facility that meets Mazda’s brand standards and incorporates certain Mazda brand image elements, including signs and displays.

8. As a part of its enrollment in the Retail Evolution Program, a dealer must agree to a timeline for constructing a certified Retail Evolution facility with certain milestones. One of those milestones is “breaking ground,” which is defined as the pouring of the foundation for “ground-up” facilities, and the demolition of the first interior or exterior wall for “renovation” facilities.

9. There are currently three (3) Mazda dealers in New Jersey that have certified Retail Evolution facilities.

10. In addition, there are currently eight (8) Mazda dealers in New Jersey that have enrolled in the Retail Evolution Program but have not completed their facilities. These dealers have all signed written agreements with Mazda concerning the use of their facilities.

11. I understand that Mazda has a dealer support program known as the “Mazda Brand Experience Program” (“MBEP”).

12. Annexed hereto as Exhibit 2 is a true copy of the MBEP “Terms & Conditions as of 2018.09.24.”

13. Page 11 of Exhibit 2 refers to a “Retail Evolution MBEP Facility Type Escrow Allowance” (“Escrow Allowance”). The rules of the Escrow Allowance provide that, for a dealer that has enrolled in the Retail Evolution Program, Mazda will escrow the difference between what that dealer would have earned under the MBEP (i) as a Retail Evolution Dealership and (ii) at its current

facility type. Mazda will hold these “incremental” funds in escrow until the dealer breaks ground on its Retail Evolution facility, at which point the escrow funds will be released to the dealer.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Bridgewater, New Jersey on November 8, 2018.



Kyle Kaczmarek